



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**DEC - 2 2008**

Ms. Carol Tobias, treasurer  
National Right to Life PAC  
512 10th Street, N.W.  
Washington, DC 20004

RE: MUR 6133  
National Right to Life PAC

Dear Ms. Tobias:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting the National Right to Life Political Action Committee and you, in your official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On November 18, 2008, the Commission found reason to believe that the National Right to Life Political Action Committee and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(g), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

Sincerely,



Donald F. McGahn II  
Chairman

Enclosures  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** National Right to Life PAC and  
Carol Tobias, in her official  
capacity as treasurer

**MUR 6133**

**I. GENERATION OF MATTER**

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

The Audit Division conducted an audit of the Committee for the period between January 1, 2003 and December 31, 2004 ("audit period") and referred one audit finding to the Office of General Counsel for enforcement action. The finding relates to the Committee's failure to file or timely file 24 and 48-Hour Notices of Independent Expenditures, in violation of 2 U.S.C. § 434(g).

**B. Failure to File Notice of Independent Expenditures**

An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate, and is not coordinated with a candidate, candidate's committee, party committee or their agents. 2 U.S.C. § 431(17). An independent expenditure shall be reported on Schedule E when that expenditure, added to other independent expenditures made to the same payee during the same calendar year, exceeds \$200. 11 C.F.R. §§ 104.3 (b)(3)(vii) and 104.4(a).

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Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20<sup>th</sup> day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. 2 U.S.C. § 434(g)(1)(A). A 24-hour notice is required for each additional \$1,000 that aggregates, and that notice must be filed on a Schedule E. 2 U.S.C. § 434(g)(1)(B). Any independent expenditure aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20<sup>th</sup> day before an election, must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. 2 U.S.C. § 434(g)(2).

For both 24 and 48-Hour Notices of Independent Expenditures, the date that a communication is publicly disseminated or distributed serves as the date a committee must use to determine if the total amount of independent expenditures, in the aggregate, has reached or exceeded the threshold for reporting. 11 C.F.R. §§ 104.4(f) and 104.5(g)(2).

During the audit period, the Committee made 1,545 independent expenditures totaling \$3,718,909. These expenditures include 71 independent expenditures—totaling \$176,721—that were made during the period January 1, 2003 through September 30, 2004, and 1,474 independent expenditures—totaling \$3,542,188—that were made after October 1, 2004 through the November 2, 2004 general election. In discussions with the Audit Division, the Committee admitted during the exit conference that it itemized all independent expenditures and filed 24 and 48-Hour Notices based on the date of the check to the vendor, rather than based on the dissemination or distribution date. Moreover, for the majority of the expenditures, the Committee failed to maintain dissemination/distribution date documentation of the

communications. In the instances where the dissemination/distribution date was ascertainable, the Committee failed to file or untimely filed the corresponding 24 or 48-Hour Notices.

With respect to the independent expenditures made during the period January 1, 2003 through September 30, 2004, the Committee failed to file or timely file 24 or 48-Hour Notices for 42 independent expenditures. As for the remaining 1,474 independent expenditures totaling \$3,542,188, the Committee failed to file or timely file 24 or 48-Hour Notices for at least 88 independent expenditures made during the period from October 1, 2004 through the November 2, 2004 general election.

Therefore, there is reason to believe that National Right to Life PAC and Carol Tobias, in her official capacity as treasurer, violated 2 U.S.C. § 434(g).